

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

NANCY SPILLAR,

Plaintiff,

vs.

MICHAEL J. ASTRUE,
Commissioner, Social Security
Administration,

Defendant.

Case No. 10-CV-574-FHM

OPINION AND ORDER

Plaintiff seeks an award of attorney fees in the amount of \$4,657.65 under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412. [Dkt. 23]. The Commissioner has no objection to the amount requested but asserts that EAJA fees are payable to Plaintiff, not counsel. [Dkt. 24].

The undersigned finds that the amount of the fee request is reasonable. Based on that finding and the absence of any objection to the amount of the fee request, the undersigned finds that Plaintiff should be awarded EAJA fees in the amount of \$ 4.657.65. Pursuant to the Commissioner's usual practice, the check should be made payable to Plaintiff and mailed to counsel's address. *See Manning v. Astrue*, 510 F.3d 1246, 1254-55 (10th Cir. 2007)(the award of EAJA attorney's fees is to claimant and not to the attorney). If Plaintiff's attorney receives the fees awarded herein and attorney fees are also awarded and received by counsel under 42 U.S.C. § 406(b) of the Social Security Act, counsel shall refund the smaller award to Plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

Plaintiff's Motion for Attorney's Fees and Expenses Under the Equal Access to Justice Act [Dkt. 23 is GRANTED as provided herein.

SO ORDERED this 10th day of February, 2012.


FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE